

**DATE:** March 22, 2010

**TO:** Senate Committee on Environment

**FROM:** Daniel H. Schlutter, Village of Plover President  
Jerry Walters, Village of Whiting President  
Andrew Halverson, City of Stevens Point Mayor

**RE:** Proposed Groundwater Legislation (AB 844/SB 620)

City of Stevens Point, Village of Plover and Village of Whiting officials recently met to discuss proposed groundwater legislation being considered by the State (AB 844 and SB 620). We strongly agree that protecting the groundwater resources of the State of Wisconsin is of paramount importance. Crafting such legislation will be difficult, and must protect groundwater resources while ensuring that communities, businesses and the agriculture industry are not financially imperiled. We urge all Senators and State Representatives to ensure that the legislation represents a fair balance in protecting groundwater resources while ensuring that communities can provide safe, reliable drinking water to their residents and ensuring that the State's agriculture industry and farmers can continue to provide potatoes and vegetables to our State and Nation.

Our communities suggest that more work needs to be completed before this legislation is ready for approval. For example, three major concerns that our communities have with the proposed legislation (page and line numbers from the legislation are referenced) are listed below. It is imperative that these concerns be addressed prior to approving groundwater legislation.

1. The proposed legislation creates requirements for GMA's (groundwater management areas) and GAA's (groundwater attention areas), which would result in the elimination of the Little Plover Work Group. The Little Plover Work Group was formulated as a voluntary committee to address low flows in certain sections of the Little Plover River. The Village of Plover, Village of Whiting, Del Monte, farmers in the recharge area, Portage County, DNR, Trout Unlimited and the Wisconsin River Alliance are members of the group. Much progress has been made by this group on a voluntary basis, including the Village of Plover switching 85% of pumping away from the Little Plover River and Del Monte's recent acquisition of 160 acres of land near the Little Plover River (that will remove an irrigation rig that pumped 50 million gallons of water from the aquifer every year). To ensure progress and measure successes, both Villages feel it is absolutely critical to keep the Little Plover River Work Group alive.
2. Language that protects municipal high cap wells (Page 13, line 22) must be strengthened. The current language gives the DNR authority to shut down municipal wells if the DNR determines there is another reasonable alternative location for the well (Page 13, line 21). Municipal water supplies, located where and operating under the DNR's rulings, are in place to protect the health, safety and welfare of highly populated areas, whether for a population of 11,000 (Plover) or 600,000 (Milwaukee). This language needs to be strengthened so that municipal wells receive priority protection because of health, safety and welfare issues. The DNR should not be allowed to shut municipal wells down unless they are going to pay for the relocation of such wells under the consideration of present and projected future municipal needs..

3. The legislation bases decisions in GMA's and GAA's based on the "baseflow" of streams (10% reduction in baseflow), as defined on Page 17, line 10. This means that any minimal impact to stream flows, whether it be from drought or periodic fluctuations in groundwater levels can result in an area being designated as a GMA or GAA, with the subsequent rules and regulations to be formulated for the area. Furthermore, what determines "normal" flow for the stream? A better alternative would be to develop a Public Rights Stage flow for the stream, as was done with the Little Plover River. A public rights stage flow takes into account a minimum amount of water flow necessary to sustain a fish population (trout in this case). The public rights stage provides some flexibility to other users of the groundwater in the area (such as farmers and municipalities), in addition to maintaining a minimum flow that is intended to maintain the health of the stream.

Other issues that should be addressed prior to considering/approving such legislation include the following:

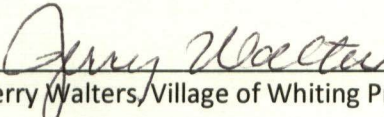
- On page 9, Line 14, the proposed bill states that the "commission shall commence a proceeding to issue an order for encouraging water conservation..." The DNR has already prepared a draft rule (Chapter NR 852 Water Conservation and Water Efficiency) in which water conservation measures are REQUIRED (not encouraged). One example is that proposed NR 852 would require that municipalities pass legislation limiting watering of decorative landscaping sod to every other day and only between the hours of 4 p.m. and 9 a.m. Our communities are concerned that the word "encouraged", which is used in the legislation is being modified to "required" in the DNR rule. In addition, who is responsible for becoming the sprinkling police? In the case of the Village of Plover and the Village of Whiting this issue becomes even more confusing since the rule may apply to those who use municipal water, but not apply to those who have their own low volume, private well. The majority of people who sprinkle in both Villages do so with their own private well.
- The definition of "Significant adverse environmental impact" (page 10, Line 7) is extremely vague. In addition, the DNR is ultimately given the authority to determine the definition at a later date. Our communities are not comfortable with this "open checkbook" philosophy.
- The definition of "spring" was altered to remove the requirement that springs have a minimum flow of 1 cfs (cubic foot per second). The introductory paragraphs to the legislation referred to a standard of .25 cfs. Discussions at the Committee level include using .25 cfs as a standard. What happened to the .25 cfs standard? The impact of the removal of any minimal flows means that all springs in the State will need to be inventoried. Who will do this inventory and at what cost? Even lowering the standard to .25 cfs meant that approximately 500 streams would need to be analyzed and added to the inventory. How will this impact DNR review of "significant adverse environmental impacts", and how will it impact high capacity well users.
- The proposed legislation allows any one individual to file a petition with the DNR requesting environmental review of a high capacity well (Page 11, line 16). The petitioner is required to submit information showing that the well as proposed would be "reasonably probable" to result in significant adverse impacts. This language is so vague that any well close to a spring or water body could reasonably be considered to have a significant adverse environmental impact. No high cap well near a stream could ever meet this standard and would never be approved. This language also empowers the DNR later in the legislation to either reduce pumping in high cap wells or eliminate them.
- The DNR has the ability to modify or rescind approvals for high cap wells (Page 15, line 10). The legislation does not define who is responsible for the financial impacts of shutting wells down. The


Villages of Plover and Whiting recently completed a study that showed that relocation of Plover wells (3) and Whiting wells (2) would cost an estimated \$17.5 million. While the Little Plover River Work Group determined that other options should be considered in lieu of relocating 5 municipal wells, the study showed that a huge financial impact exists if communities are forced to move their wells. Local communities do not have the financial capability of moving wells! The Groundwater Advisory Committee had discussed including language that a municipality would be reimbursed if a high cap well permit was modified or pulled by the DNR. What happened to this provision?

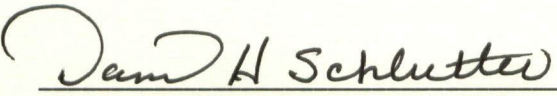
- The DNR is given the authority to periodically review and modify high cap well approvals (Page 16, line 12-15). As such, municipal wells could be impacted with little warning or advance notice.
- The legislation requires that a "target withdrawal quantity" be developed (Page 18, line 3). Our communities have significant concerns with this language. For example, how is drought considered in developing the target withdrawal quantity? Is it accounted for? The language does not answer this question. More disconcerting is the impact to agriculture and subsequent impacts to municipalities. For example, one can assume that to meet the target withdrawal quantity in a GMA, high capacity wells will need to reduce pumping or be taken off line completely. In this area it is not possible to reduce pumping, because the farmers enter into 3 year contracts with potato and vegetable processors. Those same processors also direct how crops are grown, including fertilization and watering (to ensure certain crop yields and set harvesting dates). If a farmer can't obtain a 3 year contract because of groundwater withdrawals, who will pay the farmer for the lost income? More importantly, will the DNR avoid putting restrictions on farmers because of these issues and place restriction on municipalities instead? The entire legislation appears to be directed at municipalities rather than other high cap well users. The end result could be significant financial impacts to these communities.
- One of the criteria for assigning a GMA designation includes determining that groundwater withdrawals have caused a decline of one foot or more beneath or adjacent to lakes or wetlands. This determination is based on a groundwater model. Groundwater levels fluctuate yearly. In addition, groundwater levels are affected by drought. How are these factors considered as they relate to the one foot decline criteria? No answer is provided. Of greater concern is using a groundwater model to determine groundwater elevation fluctuations. Our communities have long argued that a model (computer simulation) is not an appropriate source of information to use in establishing groundwater elevation impacts. Our communities would argue a transient model must be used because it uses actual data (stream elevations and groundwater elevations are measured throughout the impacted area to determine groundwater elevation impacts).
- The legislation proposes that areas can be removed from GAA's or GMA's after an area meets in groundwater reduction targets (page 20, line 20). This is unrealistic. An area will never be removed from a GMA or GAA because removal would mean that high cap well users would no longer be required to meet the standards enacted for the area. The DNR is not going to remove a designation knowing full well that they will have to re-establish it at a later date.
- Because of the authority given to the DNR to modify or pull high cap well permits, there really is not much difference between the GMA and GAA designations. It would be more meaningful if the DNR had less authority to pull or modify high cap well permits in GAA areas.
- The legislation proposes that an unconfined aquifer area can be designated as a GAA or GMA if it is projected that water use trends suggest that the area will be negatively environmentally impacted by high cap wells (Page 24, line 1-4). Given the drought that has been occurring in the northern 1/3 of the State and the 10% reduction in stream flow criteria, it is likely that the entire northern third of the State will be in a GAA or GMA.

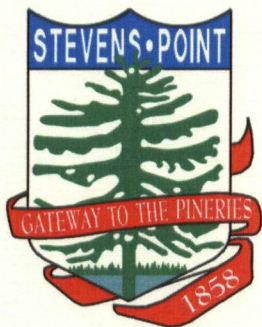
- Our communities would like assurances that the language regarding temporary groundwater removals allows dewatering for sewer and water main extension projects.
- In many cases, Federal funding assistance has been provided to communities for the purpose of siting and constructing municipal wells. At this point it is unknown how a DNR decision to eliminate a well or restrict withdrawals would affect such funding. If the Federal government would require repayment of such funds, who will be financially responsible for such costs?
- Our communities suggest criteria/requirements be developed for potential candidate appointment to the GMA or GAA council subcommittees. For example, appointments should be based upon the expertise or appropriate knowledge they bring to the table. In addition, we feel it is critical that the council subcommittee include representation from high capacity well users who are located in a proposed GMA or GAA.

It is clear to our communities that the proposed legislation needs work! Please do not pass this legislation without addressing the deficiencies that exist in the current language. We know that if we work together we can develop groundwater legislation that will protect our groundwater resources of our great State while providing for the municipal water needs of Wisconsin communities and ensuring that our farmers and the potato and vegetable industry can continue to meet the food demands of our State and Nation. Thank you for your consideration!

  
 Jerry Walters, Village of Whiting President

  
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*Village of Whiting*

